



REPLY

To the Submission of the Russian Government of 24 July 2015 on the *Khashiyev and Akayeva* group

Submitted by NGO Russian Justice Initiative

2 September 2015

A. GENERAL COMMENTS ON THE GOVERNMENT'S SUBMISSION

1. The government's action plan of 24 July 2015 does not address the vast majority of systemic problems described in the European Court's *Aslakhanova and others v Russia* judgment. In particular:
 - The Government ignores the Court's recommendation regarding the establishment of a "single, high-level body" to investigate cases on disappearances, under whose auspices work on excavation, exhumation, examination and applicant outreach should be carried out (paras. 225, 226 of the Court's decision in *Aslakhanova*). In its submission the Government specifies at least four expert institutions whose functions and responsibilities in relation to the investigation of disappearances remain unclear.
 - The information provided on forensic activities does not clearly present actual progress made, if any, in using DNA profiling to establish the identities of victims of enforced disappearances in the context of the *Khashiyev* group of cases. The Government also does not provide statistics on the number of forensic examinations already carried out on applicants in the *Khashiyev* group.
 - The government ignores the Court's recommendation on compensation (*Aslakhanova*, paras. 227 and 228).
 - The Government ignores the Court's recommendation on access to case files (*Aslakhanova*, para. 236). Applicants in cases from the North Caucasus have had increasing difficulty accessing case materials over the past two years, often being denied all access on the grounds that the materials have been classified.¹ No clear policy has emerged from the practice of the investigating authorities regarding the provision of case materials with due regard for confidentiality.
2. In addition, we find it essential to note at the outset that the Government's declared measures have had a negligible, if any, effect on specific cases. Moreover, the Government's claims regarding specific cases are misleading. **In particular, the Government's statement that the identity of 67 bodies was established (para 3.1) is particularly misleading, because the identification of these bodies are not connected to the execution of the European Court's**

¹ For more information, see RJI's submission of 10 January 2014, available at: <http://www.srji.org/upload/medialibrary/ad3/2014-01-classification-rji-and-memo.pdf>

judgments in the cited cases. In all cases cited, bodies were identified *before* the European Court issued a judgment, and this fact is usually cited in the judgment itself.

B. COMMENTARY AND QUESTIONS ON SPECIFIC STATEMENTS MADE IN THE GOVERNMENT'S SUBMISSION

1. RE: 163 genotypes received from the Chechen Republic in the *Khashiyev* group of cases

3. In paragraph 1.5.2 the Government states: "At the present time, the Single Database of Genomic Information contains the genomic information on more than 4700 genetic profiles of persons whose corpses could not be identified by other means, including 233 genetic profiles of unidentified corpses received from the constituent entities of the Russian Federation of the North Caucasus and Southern Federal Districts (163 of which are genotypes received from the Chechen Republic in the *Khashiyev* group of cases)."

Commentary

4. From the Government's statement regarding genotypes, it is assumed that it refers to a method of DNA profiling (also called DNA fingerprinting, DNA testing, or DNA typing), which is a forensic technique used to identify individuals by characteristics of their DNA. The process begins with a sample of an individual's DNA. Samples obtained from blood relatives can provide an indication of an individual's profile, as could human remains that had been previously profiled. A reference sample is then analyzed to create the individual's DNA profile. The DNA profile is then compared against another sample to determine whether there is a genetic match.

Questions to the Government

- a) **The applicants request clarification of the Government's statement that "163 genotypes had been received from the Chechen Republic in the *Khashiyev* group of cases." From the way it is phrased in the submission, it sounds as if the Government is asserting that 163 DNA profiles of disappeared persons from the Chechen Republic, whose relatives applied to the European Court of Human Rights, have already been created.** If this is indeed the case, the Government is requested to provide a schedule of the matching of the 163 DNA profiles of *Khashiyev* group victims to the DNA profiles of applicants in the *Khashiyev* group.
- b) In paragraph 1.3, the Government states that to the present day the authorities have carried out more than 500 genetic examinations "of close relatives of the abducted or missing persons ... for establishment of their genotypes and the creation of a database for further comparison with the unidentified corpses found in the territory of the Chechen Republic." It is not clear from this statement how many genetic examinations have been carried out on applicants from the *Khashiyev* group, of which there are over 1000. **Therefore the applicants request clarification regarding how many genetic examinations have been carried out of applicants in the *Khashiyev* group.**

2. Re: Agencies involved in forensic examinations

5. In paragraphs 1.1 and 1.2 the Government refers to the following agencies involved in forensic examination process:

(1) the Republican [Chechen] Forensic Medical Examination Bureau;

- (2) The Forensic and Criminalistics Centre of the Main Directorate of the Ministry of Internal Affairs of Russia for the Stavropol Territory;
- (3) The DNA laboratory of the Main Investigation Department of the Investigative Committee of Russia for the North Caucasus Federal District;
- (4) Branch No. 2 of the “111th Main State Centre of Forensic Medical and Criminalistics Examinations” of the Ministry of Defence of Russia

Commentary

- 6. The applicants remind that the European Court in the *Aslakhanova* judgment recommended the “establishment of a single high-level body to solve disappearances in the region, empowered with access to all relevant information and in direct contact with relatives of the missing” as being “by far the most sensible recommendation in this area” (see para. 225).
- 7. The Court also called on the Russian authorities to allocate “the specific and adequate resources required to carry out large-scale forensic and scientific work on the ground, including the location and exhumation of presumed burial sites; the collection, storage and identification of remains and, where necessary, systematic matching through up-to-date genetic databanks. [...]it would appear reasonable to concentrate the relevant resources within a specialised institution, based in the region where the disappearances have occurred and, possibly, working in close cooperation with, or under the auspices of, the specialist high-level body mentioned above (para. 226).”

Questions to the Government

- a) How many agencies are tasked with solving disappearances in the region and how do their cooperate with the forensic institutions mentioned by the Government?
- b) How many cases from the *Khashiyev* group have been subject to the activities of the Forensic Medical Examination Bureau in the Chechen Republic in 2014 and 2015?
- c) How many cases from the *Khashiyev* group had been subject to examination by the agencies indicated in paragraph 1.2 of the Government’s Action Plan? What type of examinations have been carried out by these agencies in connection with cases of the *Khashiyev* group?

3. RE: the Chechen Forensic Medical Examination Bureau

- 8. From the Government’s statement in para 1.1 it follows that the Republican [Chechen] Forensic Medical Examination Bureau is not carrying out genetic (DNA) research.

Commentary

- 9. In the *Aslakhanova* judgment the Court cited the then Deputy Head of the Chechen Investigative Committee, Mr Pashayev, who, among other flaws in investigations of disappearances, noted in particular the weakness of the local forensic laboratories, which did not have the capacity to carry out genetic research (para. 81).

Questions to the Government

- a) What is the reason for the failure to establish a DNA laboratory in Chechnya?

4. RE: Database “Opoznanie”

- 10. In paragraph 2 the Government refers to the creation of a centralized automated database of missing persons and informational-search system “Opoznanie.” In the same paragraph it

stated that the newly created systems are accessible for the investigative departments from the North Caucasus involved in the investigation of cases from the *Khashiyev* group.

Commentary

11. In the *Aslakhanova* judgment the Court cites the former Deputy Head of the Chechen Investigative Committee, who states that the absence of **a single database of disappeared persons** is one of the main flaws in the investigation of disappearances.

Question to the Government

- a) As it follows from the Government's statement, the creation of the "Opozvaniye" database was undertaken after the *Aslakhanova* judgment (although it encompasses all of Russia and not just the North Caucasus). How many disappeared people from the *Khashiyev* group have been added to the database since then?

5. RE: the fate of 67 missing persons was established

12. The Government states in regard to "the issue specified by the CMCE as to the establishing of the fate of missing persons" that 67 missing persons have been identified.

Commentary

13. This statement is misleading. The vast majority of the missing persons referred to by the Government *have not* been identified in the context of the execution of judgments. All were identified many years ago, at the early stages of the domestic investigation and before the European Court issued its judgment. In most cases, the fact of the identification of a body is mentioned in the judgment and figures in to the Court's finding of a violation of Article 2 ECHR.
14. Below we provide more detailed information in 16 of the cases referred to by the Government.

- 1) 1 person identified in *Askharova v. Russia* (13566/02)

The applicants refer to paragraph 12 of the ECtHR judgment, according to which the body was found in May 2001:

The applicant submitted that in the same sweeping operation nine men had been detained in Serzhen-Yurt. Two of them, including the applicant's husband, had disappeared. Mr Aslan Askharov, her nephew, had been found dead with bullet wounds later on 18 May 2001 on the outskirts of the village. Six others had been released on 18 and 19 May 2004, after having been subjected to interrogations accompanied by beatings and torture.

- 2) 9 people identified in *Bitiyeva and Others v. Russia* (36156/04)

The applicants refer to paragraph 29 of the ECtHR judgment, according to which the bodies were found on 9 April 2004:

On 9 April 2004 an unidentified person discovered nine dead bodies near the village of Serzhen-Yurt in the Shali District; eight of them were those of the applicants' missing relatives. On the same day the same person reported the event to the police. The corpses were transported to the district office of the interior.

- 3) The fragmented remains and clothing of 3 persons found in a forest near Darbankhi in *Khachukayevy v. Russia* (34576/08). The case has not yet been decided by the Court but has been communicated to the Government.

The applicants refer to the Statement of Facts of the Court in its Communication, according to which:

On 21 November 2002 fragments of three bodies and clothes were found in the in the forest near the village Darbankhi, near the road Darbankhi-Vinogradnoye in the north of the Grozny district. A relative of Sayd-Akhmed S. had taken part in the collection of the remains, he recognized some items of clothing as belonging to him (see Court's statement of facts of 10 December 2012).

- 4) 7 people found in a forest near Vinogradnoye and Khankala from the case of *Shakhgiriyeva and Others v. Russia* (27251/03).

The applicants refer to paragraphs 42 and 43 of the ECtHR judgment, according to which on 8 November 2002 the bodies of 5 men were found by locals; paragraphs 74, 75, 76, according to which the bodies of three other men were discovered on 18 April 2003 in Khankala, 400 meters away from the location of the [Internal Troops] of the Ministry of Interior and about one kilometer away from the location of the [Temporary Operative Alignment of Services] of the Ministry of Interior. The bodies were inspected by a policeman of the Grozny ROVD and by a military prosecutor, who authorised the Grozny ROVD to take the bodies away for identification and burial.

- 5) The Government submitted that 26 persons were found in a mass grave in the holiday village "Zdorovye".

RJI represents applicants in 5 cases related to the mass grave in "Zdorovye": *Magomed Musayev and Others v. Russia* 8979/02, *Luluyev and Others v. Russia* 69480/01, *Gakayev and Others v. Russia* 56745/08 (part of *Kaykharova and Others* judgment), *Khutsyeva v. Russia* 32782/10 (part of *Dovletukayev and Others v. Russia* judgment).

The applicants refer to para. 87 of the ECtHR judgment in *Magomed Musayev and Others v. Russia*: *...the bodies of the three men were discovered by the applicants on 21 February 2001. The documents issued by the Dolinskaya clinic and the Grozny district civil registration office certify that that the deaths of at least two of the three men were violent, referring to "numerous gunshot and knife wounds to the body and head", and state the time of death as 21 February 2001, the date on which the bodies were discovered. The validity of these documents has not been questioned.*

In *Luluyev and Others v. Russia* the Court stated in paras. 28-29: *On 24 February 2001 news came through that a mass grave had been uncovered in "Zdorovye," an abandoned holiday village on the outskirts of Grozny, less than one kilometer from Khankala, the headquarters of the Russian military forces in Chechnya. 47 bodies, dumped in the village, had been collected and transferred to a temporary location in Grozny belonging to the Ministry for Emergency Situations...on 2 March 2001 a forensic examination was performed on the bodies.*

In the case of *Gakayev and Others v. Russia* the Court states in para. 6: *In one case (Gakayev and Others, no. 56745/08), two bodies of the victims have been found with signs of violent deaths.*

In the case of *Khutsyeva v. Russia* the Court states in paras. 132-133: *On 4 March 2001 a body bearing signs of violence was found next to the Michurina state farm in the Urus-Martan district. Tire tracks of military vehicles were found next to it. Later that day the applicant and her relatives identified the body as being Supyan Khutsayev.*

- 6) 1 corpse found in a burial near Argun in the case of *Akhmadova and Sadulayeva v. Russia* 13670/03.

The applicants refer to paragraphs 36-37, according to which at the end of April 2002 local people found the body at the edge of Argun and on 1 May the applicant and her relatives identified the body.

- 7) The Government submitted that the fragments of two corpses were found near the farm Sernovodskaya in the case of *Khadzhaliyev and Others v. Russia* 3013/04.

The applicants refer to paragraphs 19-22 of the ECtHR judgment, according to which the bodies of the applicants' relatives were found on 19 December 2002:

According to the applicants, the remains were spread over an area of 500 square meters. Upon their examination it was established that the remains originated from dead bodies which had been decapitated and then blown up. The heads of those killed were not found... On 20 December 2002 an investigator of the inter-district prosecutor's office examined the remains in the premises of the Sunzhenskiy ROVD. On the same date the first applicant and his relatives identified the remains as belonging to Ramzan and Rizvan Khadzhaliyev. According to the applicants, the identification was based on the victims' distinctive hands and fingers, as well as on the fragments of clothing.

- 8) 6 corpses found near Stariye Atagi in the case of *Arzu Akhmadova and Others v. Russia* 13670/03.

The applicants refer to paragraphs 53-55 of the ECtHR judgment, according to which on 7 March 2002 the bodies of 7 people were found in a burnt house. Only one body was identified as Imran Kuntayev. On 8 March 2002, locals found a burnt vehicle near Staryye Atagi with three burnt bodies inside, which could not be identified.

- 9) The remains of 3 people found in Mesker-Yurt in the case of *Nasukhanov v. Russia* (1572/07).

The applicants refer to paragraph 17 of the ECtHR judgment:

On 20 February 2002 the first and second applicants went to the village of Mesker-Yurt of the Shali District and examined two dead bodies, which were burnt from head to waist. The first and second applicants recognised their sons' shoes and trousers and identified the dead as Movsar and Movladi Nasukhanov. On the same day the first and second applicants took the bodies home.

- 10) The remains of 3 persons were found in the case of *Dovletukayev and Others v. Russia* (7821/07).

The applicants refer to para. 11 of the Court's judgment, according to which the body of Mr Aslan Dovletukayev was discovered on 17 January 2004 by two servicemen of the 34th squadron stationed in Argun, by the village of Dzhalka, in the Gudermes district. They also refer to paras. 53-54 of the judgment, which describes how the blown-up remains of Khizir Gulmutov were found about 1.5 kilometers from the northern outskirts of Kurchaloy, 2 kilometers from the military checkpoint of KPPM-95. Finally in para. 80, the Court refers to the finding of the body of Islam Tazurkayev in a mass grave in Zdorovye. The body bore signs of a violent death.

Questions to the Government:

- a) In the *Arzu Akhmadova* case, the Government says that six bodies were identified, whereas the Court makes reference in its judgment to only one body that could be identified. Has the Government identified missing persons who are the relatives of the applicants in this case?
- b) Has the Government identified any missing persons in the context of the execution of one of the judgments of the *Khashiyev* group?

6. RE: Single Federal Database of Genomic Information

15. In paragraph 1.5 the Government states that the Single Federal Database of Genomic Information was operating as part of the Forensic and Criminalistics Centre of the Ministry of Internal Affairs.

Commentary

16. In accordance with Russian law, expert agencies should belong to the system of the Ministry of Justice of the Russian Federation, although certain agencies also have expert facilities within their structure. Russian legislation gives prime importance to the independence of experts from any outside influence (Article 7 of the Federal Law 73-FZ of 31 May 2001 “Regarding state judicial-expert activities of the Russian Federation”).

17. In judgments delivered against Russia concerning the North Caucasus, the ECtHR established the involvement of members of law-enforcement, including interior ministry officials, in grave violations of the Convention.

Question to the Government

- a) If the Single Federal Database of Genomic Information is essentially a structural division of the Ministry of Internal Affairs, then how is this set-up consistent with the requirements of Russian legislation on the independence of experts and expert institutions?

7. RE: application of statutes of limitation

18. In paragraph 4 the Government confirmed the possibility of termination of criminal investigations after the establishment of the identity of the perpetrators.

Commentary

19. RJI and other NGOs have repeatedly raised concerns about encroaching limitation periods and their effect on the ability of *Khashiyev* group applicants to pursue accountability for grave violations of the Convention as well as domestic law.² These concerns only grow more urgent with the passing of time.

² See in particular submissions of 22 November 2011 (available at <http://www.srji.org/files/implementation/SoL%20FINAL%2022%20November%202011.pdf>) and September 2012 (available at: <http://www.srji.org/upload/medialibrary/239/2012-09-rji-and-memo-sol.pdf>).